Paper No. 9

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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<u>Ex parte</u> THOMAS P. COOPER, MICHAEL J. HILL, DENNIS R. KONRAD,
and THOMAS L. NOWATZKI

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Appeal No. 2001-2296
Application No. 09/001,138

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ON BRIEF

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Before BARRETT, RUGGIERO, and BLANKENSHIP, <u>Administrative Patent Judges</u>.

BLANKENSHIP, <u>Administrative Patent Judge</u>.

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the examiner's final rejection of claims 1-31, which are all the claims remaining in the application.

We reverse.

BACKGROUND

The invention is directed to method and apparatus for tracking messages and

transactions communicated between a number of users and a number of hosts, where

the hosts are executing concurrent applications. According to appellants, a problem

existed in the prior art in that the integrity of concurrent applications operating on

multiple hosts and accessing a common database could be compromised if one of the

concurrent hosts were to fail. Appellants' invention keeps track of messages between

users and hosts executing a concurrent application, for permitting recovery from a host

failure. Representative claim 17 is reproduced below.

17.   A data processing system having a number of users coupled to a number
        of hosts, the number of hosts coupled to a common memory and executing a
        concurrent application, each one of a number of user sessions corresponding to
        a one of the number of users communicating with a one of the number of hosts
        executing the concurrent application, the one of the number of users
        communicating with the one of the number of hosts by sending a number of
        messages to and receiving the number of messages from the one of the number
        of hosts, comprising:

        a.   a number of counters coupled to the number of hosts for counting the
                number of messages, each one of said number of counters corresponding
                to the one of the number of user sessions to count the number of
                messages for the corresponding one of the number of user sessions.

        The examiner relies on the following reference:

Lewis   5,893,115   Apr. 6, 1999
                                                                (filed Nov. 29, 1995)

        Claims 1-31 stand rejected under 35 U.S.C. § 102 as being anticipated by Lewis.

We refer to the Final Rejection (Paper No. 5) and the Examiner's Answer (Paper No. 8) for a statement of the examiner's position and to the Brief (Paper No. 7) for appellants' position with respect to the claims which stand rejected.

OPINION

"Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention." RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

In response to the rejection of claims 1-31 as being anticipated by Lewis, appellants allege that Lewis does not show a data processing system, a number of users coupled to a number of hosts, a common memory, a concurrent application, one of the number of users communicating with one of the number of hosts by sending a number of messages to and receiving a number of messages from, as recited in instant claim 1. (Brief at 8-9.) Appellants stress that instant claim 1 is drafted in Jepson format, and requires combination of all the elements in the preamble with the further elements of the "improvement."

Instant claims 2 and 17, the other of the independent claims, are not drafted in Jepson format. However, we interpret the respective preambles of the claims as limiting the scope of the invention. A claim preamble has the import that the claim as a whole suggests for it. Bell Communications Research, Inc., v. Vitalink Communications

Corp., 55 F.3d 615, 620, 34 USPQ2d 1816, 1820 (Fed. Cir. 1995). Each of claims 2

and 17 refers in the body of the claim to "the number of hosts," "the number of

messages," and "the number of user sessions." We thus regard the preamble

recitations describing the hosts, messages, and user sessions as providing antecedent

for the corresponding elements in the body of the claims, and limiting the claimed

subject matter accordingly.

While undoubtedly data processing systems, users, hosts, concurrent

applications, and sending and receiving messages were in the prior art at the time of

invention, we agree with appellants that the rejection does not show the claimed

combinations in the Lewis reference.

The rejection (Answer at 4-6) is deficient in pointing out how disclosed structures

of Lewis are deemed to correspond to particular claim terms. The rejection does,

however, relate that "counting means" for counting the number of messages "is shown

by the prior art as the counter in figure 3 and discussed on Col. 4 lines 36 et seq." (Id.

at 5.) A "counting means" is set forth in instant claims 1 and 2, and the "counting

means" referenced in the rejection apparently applies to the "number of counters" set

forth in claim 17.

Figure 1 of Lewis illustrates a telecommunications network comprising

equipment (e.g., telephones) 10, 26, connected to local central offices 12, 24. The

local central offices are attached in turn to toll switches 14, 20, and ultimately to

signaling network 32 and network control point (NCP) 40. NCP 40 stores a record for

each billed subscriber in which totals of cumulative charges of different types of calls are maintained. Col. 2, ll. 9-43.

Figure 2 of Lewis further illustrates NCP 40. Billing records are maintained in data storage unit 48. Col. 2, ll. 47-67. Figure 3 of the reference shows billing records stored by data storage unit 48. Record column 52 provides a telephone number or other unique identifier for indexing records. Columns 60 and 62 represent counters containing cumulative values for each subscriber, shown as approximate dollar values on a cumulative basis where each counter represents a type of call made by the subscriber. Col. 3, ll. 1-62. Figure 4 and columns 4 and 5 of Lewis describe the updating of these counter values.

Instant claim 17 recites "a number of counters coupled to the number of hosts." Lewis does disclose "a number" of counters, but the rejection fails to show how these counters may be coupled to a plurality of hosts. Most likely, the rejection deems NCP 40 (Figs. 1 and 2) of Lewis to be a "host." However, as described by the reference, there is but a single "host" associated with the counters represented in Figure 3 of Lewis. Further, it has not been shown how each one of the number of counters may correspond to "the one of the number of user sessions" to count the number of messages for the corresponding one of "the number of users sessions," as required by claim 17. The counters in Lewis are disclosed, to the contrary, as maintaining and preserving cumulative values for a particular subscriber.

While the "counting means" of claims 1 and 2, and the "number of counters" of claim 17, are not the only claimed elements we find to be missing from Lewis, we note that a single deficiency in a reference is fatal to a case for anticipation under section 102. Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 730 F.2d 1452, 1458, 221 USPQ 481, 485 (Fed. Cir. 1984).

We do not sustain the rejection of claims 1-31 under 35 U.S.C. § 102 as being anticipated by Lewis.

CONCLUSION

The rejection of claims 1-31 under 35 U.S.C. § 102 is reversed.

REVERSED

LEE E. BARRETT Administrative Patent Judge	)
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	) BOARD OF PATENT
JOSEPH F. RUGGIERO Administrative Patent Judge	) APPEALS
	) AND
	) INTERFERENCES
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HOWARD B. BLANKENSHIP Administrative Patent Judge	)

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CHARLES A JOHNSON
UNISYS CORPORATION MS 4772
2276 HIGHCREST ROAD
ROSEVILLE , MN 55113